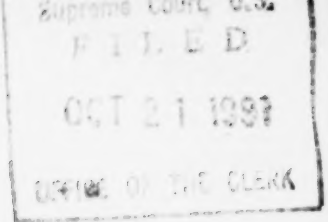


No. 91-492



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

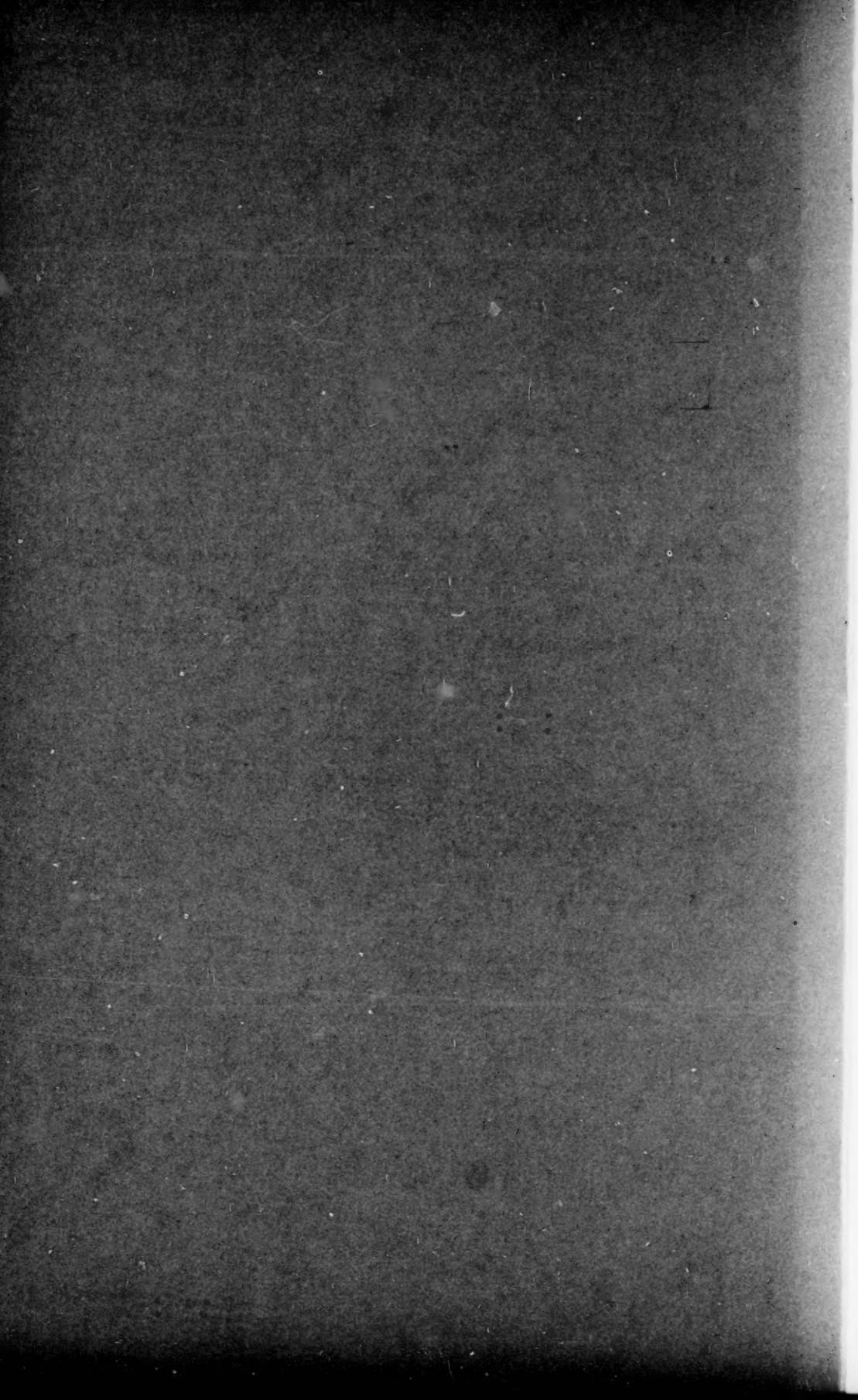
RICHARD W. PLYMALE, *Petitioner,*

vs.

DONALD R. FREEMAN, ESQ., JUDITH A. FULLERTON,
MICHAEL J. MANGAPORA, ROBERT WEYHING, III,
MICHAEL V. KELL, BARRY L. MOON, H. WILLIAM
BUTLER, DONALD G. ROCKWELL, THOMAS YEOTIS,
ROBERT M. RANSOM, WILLIAM A. REDMOND,
STEWART A. NEWBLATT, JOHN DOE, John/Jane
Doe 1, John/Jane Doe 2 each and every
associate of the court officers represented
above, JURIDICAL PERSON OF THE CHIEF
ADMINISTRATIVE OFFICE OF THE JUDICIAL COURT
SYSTEM OF THE STATE OF MICHIGAN, *Respondents,*

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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STATEMENT OF QUESTION PRESENTED

DID PETITIONER'S 119-PAGE, 24-COUNT COMPLAINT VIOLATE RULE 8 OF THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH REQUIRES SHORT, PLAIN, SIMPLE, CONCISE AND DIRECT PLEADINGS?

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STATEMENT OF THE CASE

Procedural

Petitioner, Richard Plymale, acting in pro se, is suing for damages for alleged violation of constitutional rights and for treble damages under the Racketeer-Influenced Corrupt Organizations Act (RICO). [Complaint] Named as defendants are Michigan Attorneys Michael Mangapora, Robert Weyhing III, Michael Kell, William Butler, Barry Moon, Donald Rockwell, William Redmond, and Federal District Court Judge Stewart Newblatt of the Eastern District of Michigan, and state Circuit Court Judges Donald Freeman, Judith Fullerton, Thomas Yeotis and Robert Ransom. [Id.] Also named as defendants are the "Juridical Person of the Chief Administrative Office of the Judicial Court Systems of the State of Michigan" and "John Doe, John/Jane Doe 1, John/Jane Doe 2, each and every

associate of the court officers represented above". [Id.]

Plaintiff's Complaint was dismissed with prejudice by federal district court Judge Robert H. Cleland "for failure to comply with Rule 8 of the Federal Rules of Civil Procedure". [Petitioner's Appendix B, Order of Dismissal, P.3]

Plaintiff claimed an appeal as right to the Court of Appeals for the Sixth Circuit. By order filed April 12, 1991, with mandate issued May 13, 1991, the dismissal of the District Court was affirmed. A panel affirmed the dismissal without oral argument, finding the District Court "did not abuse its discretion in dismissing Plymale's Complaint for failure to comply with Rule 8."

Factual

Richard Plymale, adjudging himself aggrieved via his unsuccessful protracted

state court litigation on the question of whether he, a dentist, acted properly in billing Delta Dental for application of a product known as "Zercate Treatment Paste", sued numerous defendants seeking an assortment of odd and improper remedies. [Complaint]

Dr. Plymale urged that the District Court declare that all the defendants' citizenship be revoked, that their constitutional rights be declared null, and that their "status" be changed to "alien resident" under the supervision of the Department of Immigration and Naturalization Services. [Id.] He appealed to the "lex talionis" ("... an 'eye for an eye' and no constitutional rights for no constitutional rights"). [Id.] He asked that the entire court system of Michigan, which he accused of corruptness, be altered to a buddy system where no one judge could act without the concurrence of another. [Id.] He

asked that the District Court replace the elected Judges of the Supreme Court of Michigan by senior Court of Appeals Judges "... as determined by length of service". [Id.] Dr. Plymale suggested that "regulatory agencies", apparently the Michigan Judicial Tenure Commission, should be replaced by a division of the Michigan Department of Licensing and Regulation (or "another such independent regulatory agency"). [Id.]

Defendant Attorneys Weyhing, Kell and Butler represented Delta Dental in certain of the underlying proceedings of which plaintiff complains. These defendants are named within 15 of the 24 Counts which plaintiff's 119-page (unnumbered pages) Complaint identifies. [Id.] The gist of those individual Counts are described by plaintiff in the first paragraph following each of his Count ("Complaint") designations. [Id.] The nature of each Count

most frequently defies paraphrasing and, frankly, defendants have been unable to offer the Courts which have reviewed this matter any further assistance in determining what plaintiff is talking about.

Plaintiff's claims are:

COUNT I - "... knowing toleration of the presentation of absolutely and patently false information in a court of law and the action based on it, with the knowledge that it was malicious." [including re: Weyhing and Kell]

COUNT II - "...malicious misuse of personal, private information obtained under color of a subpoena..." [including re: Weyhing and Kell]

COUNT III - "...the use of United States Letter Patent information fraudulently, and with the intent to obtain the use and benefit of this intellectual property without proper compensation" [including re: Butler]

COUNT IV - "...the utilization of perjured testimony [sic] as fact, and the basis for the finding of fact wrongfully" [including re: Weyhing and Kell]

COUNT V. - "...the failure to distinguish specifics to avoid false assumptions based on vague and inaccurate statements [sic] and to allow injury from their use" [including re: Weyhing and Kell]

COUNT VI - "...concerns the unfair application of procedural rules" [including re: Weyhing, Kell and Butler]

COUNT VII - "...concerns the impeachment of a finding of a court for improper conduct in judgment" [including re: Weyhing and Kell]

COUNT VIII - "...deals with the financial interest of an academic institution and the effect of their financial interest" [including re: Weyhing and Kell]

COUNT IX - "...deals with the conflict of interest between a profit and a non-profit organization" [including re: Weyhing and Kell and "all associated [sic] of Clark, Klein and Beaumont at all times"]

COUNT X - "...involves the profit business activities of a tax-payer supported university" [including re: Weyhing and Kell]

COUNT XI - "...concerns the malicious failure of a regulatory agency to objectively carry out its appointed duty" [including re: Weyhing and Kell]

COUNT XII - "...concerns the failure to produce vindicating 'new evidence' and the deliberate concealing of fact of material importance" [including re: Weyhing and Kell]

COUNT XIII - "...involves the failure to remove slander from public official records" [including re: Weyhing and Kell]

COUNT XIV - "...is concerned with the maintenance of testimony adjudged [sic] to be false" [including re: Weyhing and Kell]

COUNT XV - "...is about a failure to answer a subpoena without penalty..." [including re: Weyhing and Kell]

This was plaintiff's second Federal District Court Complaint against Attorneys Weyhing, Kell and Butler, et al. [Order of Dismissal, p. 2] Plaintiff's first Federal District Court complaint, Plymale v. Freeman, et al, No. 88-CV-40163-FL, was assigned to

Judge (later defendant) Newblatt. [Id.]
After motions to dismiss were filed by several of the attorney and judicial defendants in plaintiff's first lawsuit, Judge Newblatt entered an order striking plaintiff's Complaint and directing that an amended complaint complying with the Federal Rules of Civil Procedure be filed within 13 days. [Id.]

An amended complaint was filed by plaintiff in that prior action. [Id.] Judge Newblatt ruled, however, that the amended complaint was defective as well and plaintiff's amended complaint was dismissed (without prejudice) for the specified reason that it failed to comply with Fed. R. Civ. P. 8(a) requiring a proper jurisdictional statement and a short claim showing entitlement to relief. [Id., pp. 2-3]

Plaintiff's present lawsuit was filed on December 27, 1989. [R.1; Complaint] A comparison of the present Complaint with the original complaint reveals that, except with the addition of Federal District Court Judge Newblatt as a defendant, plaintiff's new Complaint added nothing of significance to an understanding of his claims except unintelligible RICO allegations and bulk. [Id.]

Defendants Weyhing, Kell and Butler answered plaintiff's Complaint with a Motion to Dismiss, asking the District Court, the Honorable Robert Cleland, to dismiss plaintiff's Complaint with prejudice. [Respondents' Motion to Dismiss] Defendants argued that plaintiff's Complaint violated Fed. R. Civ. P. 8 which requires short, plain, simple, concise and direct pleadings. [Id.]

Other defendants filed similar Motions to Dismiss based on Rule 8 and other additional grounds.

Defendants submitted that even affording this pro se plaintiff the benefit of a greatly relaxed attention to the formal requirement of proper pleading, his Complaint was so deficient as to require dismissal. Given the fact that this was a reinstituted lawsuit following a prior involuntary dismissal, and given plaintiff's unsuccessful attempt to provide the amendment called for by Judge Newblatt in his first federal lawsuit, defendants also submitted that dismissal with prejudice was in order.

On September 20, 1990, the District Court Judge Robert Cleland entered an Order of Dismissal, dismissing plaintiff's Complaint for failure to comply with Fed. R. Civ. P. 8. Judge Cleland ordered that plaintiff's

Complaint be dismissed "with prejudice", finding that "because the Complaint contains multiple defects upon which dismissal may be granted for the particular defendants", these "substantial infirmities" made "repleading moot". [Dist. Ct. Op., p. 3.] Plaintiff appealed the Order of Dismissal to the Sixth Circuit Court of Appeals, which affirmed the dismissal, finding no abuse of discretion.

SUMMARY OF ARGUMENT

Richard Plymale seeks remedies and raises claims which remain incomprehensible despite the fact that, in his first lawsuit, he filed a complaint and an amended complaint (eventually dismissed without prejudice) and received the benefit of Judge Newblatt's directives regarding Fed. R. Civ. P. 8. When his second lawsuit was filed, joining Judge Newblatt as a defendant, the parties found that the confusion and imprecision was compounded. Given that plaintiff failed to set forth a short, plain statement of his jurisdictional basis and his claim, dismissal was proper. Given the aggravated circumstances evident in Dr. Plymale's second lawsuit against the parties, with a renewed and exacerbated round of Fed. R. Civ. P. 8 violations, dismissal with prejudice was proper.

ARGUMENT

GIVEN THE NUMEROUS VIOLATIONS OF THE FEDERAL RULES REGARDING THE FORM OF PLEADINGS, PLAINTIFF'S COMPLAINT WAS PROPERLY DISMISSED; GIVEN THE NATURE OF THE VIOLATIONS AND THE FACT THAT THIS WAS A REINSTITUTED COMPLAINT FOLLOWING AN EARLIER COMPLAINT WHERE AMENDMENTS WERE ALLOWED AND PLAINTIFF WAS STILL UNABLE TO CURE THE DEFECTS, DISMISSAL WITH PREJUDICE WAS PROPER.

A.

Plaintiff failed to set forth a short and plain statement of the jurisdictional bases of his Complaint or of his claims showing that he was entitled to relief, Fed. R. Civ. P. 8(a)(1) and (2), and the averments were not simple, concise and direct, as required, Fed. R. Civ. P. 8(e).

Fed. R. Civ. P. 8(a)(1) and (2) provide:

A pleading which sets forth a claim of relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain: (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief.

Fed. R. Civ. P. 8(e) emphasizes and summarizes the requirement of clarity in pleading:

Each averment of a pleading shall be simple, concise and direct. * * *

Plaintiff's Complaint pled that Plaintiff is a Michigan resident but failed to identify the citizenship of any of the Defendants. Reference was made to Section 1983 of the "1971 Civil Rights Act" and to the "Racket Influenced Corrupt Organization Act of 1970" at the start of the Complaint, but these references were not linked to any of the specific 24 "Complaints" [counts] included within the pleading. Thus, "... the buckshot method of pleading leaves to the court and the other parties the task of analyzing and determining the relevancy and pertinency of the cited statutes to each claim and in relation to each of the defendants, Woody [v Sterling Aluminum] 243 F. Supp. [755] at 7630,

a task which properly should rest with plaintiff", Crumpacker v. Civiletti, 90 F.R.D. 326 (N.D. Ind, 1981). Further, with the numerous vague references to "Juridical" [sic] persons and "each and every associate of...", it was not even possible to know the identity of all the persons plaintiff contended he was suing. Fed. R. Civ. P. 8(a)(1) was offended.

Even more egregious was plaintiff's violation of Fed. R. Civ. P. 8(a)(2) and 8(e). The rambling, frequently unintelligible, sometimes scandalous nature of plaintiff's pleadings made it impossible for the lower courts (or for the defendants) to understand what plaintiff was talking about during most of the 119 pages of his Complaint. Neither defendants nor the lower courts could know how plaintiff purported to get to federal court or why. "The law does not require, nor does justice demand, that a judge must grope

through pages of irrational, prolix and redundant pleadings", Passic v. State, 98 F. Supp. 1015, 1016 (E.D. Mi., 1951). U.S. General v. City of Joliet, 598 F.2d 1050, 1053 (7th Cir., 1979), articulates some of the general concerns propelling Rule 8:

Federal pleading practice even under the most liberal view does not mean that all the rules may be ignored. Some understandable allegations, even if inartfully drawn, remain essential to any effort to formulate a recognizable issue for disposition on its merits.

B.

Dismissal was the proper remedy for violation of Fed. R. Civ. P. 8.

Even plaintiffs appearing without the aid of legal counsel, are to be held to the standards of Fed. R. Civ. P. 8(a)(2) and 8(e). In Crumpacker, supra, the District Court dismissed a pro se plaintiff's Complaint, with prejudice, for failure to comply with 8(a)(1) and (2). The court found the 53-page

complaint "overly-long", "rambling", employing a "circuitous style", with "irrelevant and derogatory comments" directed at defendants. In Holsey v. Collins, 90 F.R.D. 122 (D. Md., 1981), the District Court dismissed a \$1983 civil rights claim filed pro se, finding the Complaint "voluminous" and "manageable only with an uneconomical expenditure of resources". Explained the court: "Even pro se litigants... must meet certain minimal standards of pleading...". In In Re: "Santa Barbara Like It Is Today" Copyright Infringement, 94 F.R.D. 105 (D. Nev., 1982), the pro se litigant was not allowed to file an amended complaint and the Complaint was dismissed with prejudice for failure to comply with Fed. R. Civ. P. 8 concerns. The court noted, among other points, that the complaint was "confusing as to what claims are asserted and any factual basis for the claims" and that

it was "conclusory and contain[ed] disparate and unrelated allegations". The court found it would be a "travesty of justice" to require the defendants to answer the Complaint or to be subject to discovery.

What was stated of the complaint in Brown v. Califano, 75 F.R.D. 497, 499 (D. DC, 1977) and reiterated in the Santa Barbara... litigation applies with equal force to the present case:

The pleading filed in this case is indeed a confused and rambling narrative of charges and conclusions concerning numerous parties, organizations and agencies. The complaint contains an untidy assortment of claims that are neither plainly nor concisely stated, nor meaningfully distinguished from bold conclusions, sharp harangues, and personal comments. Nor has plaintiff alleged with even modest particularity the dates and places of the transactions of which he complains. It belabors the obvious to conclude that the complaint filed in this action falls far short of the admittedly liberal standard set in F. R. Civ. P. 8(a).

In accord as to dismissal resulting from violation of rules of pleadings such as those set forth at Fed. R. Civ. P. 8(a)(2) and/or (e), see, for example: Ausherman v. Stump, 643 F.2d 715 (10th Cir., 1981) [court concludes that suit does not involve patent rights, as claimed, and finds complaint violative of 8(a) in that it is "prolix", a "rambling narrative", with "the various causes of action... commingled"]; Friedman v. Younger, 46 F.R.D. 444, 447 (C.D. Cal, 1969) ["Where a complaint alleging a violation of civil rights is... verbose, confused and redundant, the defendants are entitled to a dismissal"]; Brown, supra, at 499 [Dismissal under Rule 8 as to a complaint containing "a confused and rambling narrative of charges and conclusions"]; Brainard v. Potratz, 421 F. Supp. 836, 839 (N.D. Ill., 1976) aff'd 566 F.2d 1177 (7th Cir., 1977) [Dismissed under

Rule 8 as to a complaint that was "prolix, argumentative, and replete with legal conclusions"]].

C.

The Sixth Circuit acted properly in affirming the District Court's Dismissal with prejudice. This was the proper remedy for Rule 8 violations under the aggravated circumstances of this case, as authorized at Fed. R. Civ. P. 41(b).

Fed. R. Civ. P. 41(b) provides, in pertinent part:

For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him... Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision...operates as an adjudication upon the merits.

In Nevijel v. North Coast Life Ins., 651 F.2d 671, 673-674 (9th Cir., 1971), the Ninth Circuit affirmed the trial court's dismissal, with prejudice, for the plaintiff's failure to comply with Fed. R. Civ. P. 8(a) and 8(e):

A complaint which fails to comply with rules 8(a) and 8(e) may be dismissed with prejudice pursuant to rule 41(b). Schmidt v. Herrmann, 614 F.2d 1221 (9th Cir., 1980); Von Poppenheim v. Portland Boxing and Wrestling Commission, 442 F.2d 1047 (9th Cir., 1971); cert denied 404 U.S. 1039, 92 S.Ct. 715, 30 L.Ed.2d 731 (1972); Corcoran v. Yorty, 347 F.2d 222 (9th Cir.) cert denied 382 U.S. 966, 86 S.Ct. 458, 15 L.Ed.2d 370 (1965); Agnew v. Moody, 330 F.2d 868 (9th Cir.) cert denied 379 U.S. 867, 85 S.Ct. 137, 13 L.Ed.2d 70 (1964).

The court observed that aggravated circumstances can make a dismissal with prejudice under Rule 41(b) appropriate and that, on appeal, a trial court's decision will be reviewed only under an abuse of discretion standard, Nevigel, at 674.

The Santa Barbara... case, supra, is in accord regarding a pro se plaintiff's complaint:

[A] complaint which fails to comply with Rule 8(a) and (e), FRCP, may be dismissed with prejudice pursuant to Rule 41(b), FRCP, and this court's inherent power.

In this case, most of the defendants had been previously sued by Dr. Plymale. The present lawsuit was a more egregious offense to Rule 8 than in its original form. Given what must on refiling be regarded as gross and knowing violations of the rules of pleading, dismissal with prejudice was proper. The Sixth Circuit acted properly in affirming the dismissal.

CONCLUSION

Respondents, Robert Weyhing, Michael V. Kell, and H. William Butler, ask that Petitioner Richard W. Plymale's Petition for Writ of Certiorari be denied.

COLLINS, EINHORN & FARRELL, P.C.

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Dated: October 18, 1991